

EXHIBIT N

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL : MDL NO. 1456

INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:

PRICE LITIGATION : 01-CV-12257-PBS

THIS DOCUMENT RELATES TO :

U.S. ex rel. Ven-a-Care of : Judge Patti B.

the Florida Keys, Inc. v. : Saris

Abbott Laboratories, Inc., : Chief Magistrate

No. 06-CV-11337-PBS : Judge Marianne B.

- - - - - x Bowler

State of California ex rel. :

Ven-a-Care of the Florida Keys, :

Inc. v. Abbott Laboratories, Inc.,:

No. 03-CV-11226 :

- - - - - x

Miami, Florida

Wednesday, May 9, 2007

Videotaped deposition of T. MARK JONES,

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2 1 in that fashion.

3 2 Q. Are handwritten notes -- first of all,

4 3 does Ven-a-Care have any handwritten notes that are

5 4 kept?

6 5 A. We do.

7 6 Q. Are those also Bates stamped and control

8
9 7 numbered?

10
11 8 A. They are.

12
13 9 THE VIDEOGRAPHER: Excuse me. Could we

14 10 take a 30-second break, please.

15 11 MR. COOK: Absolutely. Is this a good

16 12 time for a bathroom break?

17 13 THE WITNESS: That would be great.

18 14 THE VIDEOGRAPHER: 10:05 a.m., going off

19 15 the record, end of Videotape No. 1.

20 16 (Thereupon, a recess was taken, after

21 17 which the following proceedings were held:)

22 18 THE VIDEOGRAPHER: 10:18 a.m. Videotape

23 19 No. 2. We are back on the record.

24 20 BY MR. COOK:

25 21 Q. Mr. Jones, we started describing earlier

26 22 sort of the business of Ven-a-Care in 1987 and the

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2
3 1 documents that generated in the business that you
4 2 had.

5 3 Am I correct in assuming that the business
6 4 of Ven-a-Care remained largely the same from 1987
7 5 through 1992, or did it change at all?

8 6 A. It remained largely the same, but it began
9 7 changing in '91, '92.

10 8 Q. In what way did it begin changing?

11 9 A. Well, we got into the lawsuit with three

12
13
14 10 of our physician referral sources. They -- they
15 11 went -- they brought a proposal to us from an NMC
16 12 home care ventures company that wanted to do what we
17 13 were doing, only they wanted to be able to do it
18 14 also in the physicians' offices.

19 15 Q. Okay.

20 16 A. That is what the -- what spurred the
21 17 lawsuit was we had -- three of the physicians were
22 18 also shareholders of Ven-a-Care, and we had them in
23 19 a noncompete, and they sued us based on the
24 20 noncompete, saying that it was not a legal -- or a
25 21 legal thing in Florida.

26 22 Q. And so beginning in 1992, some of the

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2
3 1 efforts of Ven-a-Care were diverted to a lawsuit, I
4 2 take it?

5 3 A. A significant amount.

6 4 Q. Once the lawsuit was initiated in 1992 -5

7 MR. BREEN: Objection to form.

8 6 MR. COOK: You are right, I probably have
9 7 that wrong.

10 8 MR. BREEN: I tell you it was '91.

11 9 BY MR. COOK:

12
13
14 10 Q. Once the lawsuit was initiated, how much
15 11 of your business continued on providing infusion
16 12 services as it was before?

17 13 A. I want to say that it decreased
18 14 significantly quickly. Statistically, it is hard
19 15 for me to tell you. Because they opened up their
20 16 own competing pharmacy, they were able to refer
21 17 their patients to themselves. So a lot of our
22 18 patients were lost to them.

23 19 Now, we had some patients, and we
24 20 continued to take care of them. But, no, it was
25 21 dramatically different. I mean, that was part of
26 22 our countersuit, you know.

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2 1 Q. And so if we measure the volume of

3 2 Ven-a-Care's business by patients -

4
5 3 A. Uh-huh.

6 4 Q. -- it dropped substantially with -- about

7 5 the time that this lawsuit was initiated with these

8 6 three physicians?

9 7 A. Yeah.

10 8 Q. Did it ever pick back up again?

11 9 A. No.

12 10 Q. And so the records from 1991 or '92 to the

13 11 present of patient records, those would represent

14 12 the services that Ven-a-Care was providing to that

15 13 reduced patient flow; correct?

16 14 A. In general. In general. Well, because

17 15 sometimes we had long-term patients. I mean, there

18 16 may have been someone that we did for five years,

19 17 you know.

20 18 Q. There may have been someone who was with

21 19 you before -20

22 A. Right.

23 21 Q. -- and stayed with you after the lawsuit

24 22 and the diminution in your patient flow?

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2
3 1 Fresenius; correct?

4 2 A. Correct.

5 3 Q. As I understand it, Ven-a-Care also

6 4 continued investigatory activity relating to drug

7 5 pricing issues as well throughout the '90s; is that

8 6 correct?

9 7 A. That's correct.

10 8 Q. My question is, what types of

11 9 investigatory activities did Ven-a-Care undertake

12
13
14 10 throughout the '90s and into -- after 2000 until

15 11 today relating to drug pricing?

16 12 A. Well, I think, to the best of my

17 13 recollection, the easiest way for me to describe it,

18 14 in the beginning we started to understand -- I mean,

19 15 the lawsuit with ImmuneCare, the biggest allegation

20 16 that I recall, the one that really stuck in my craw

21 17 was the physicians referring to themselves and

22 18 splitting the -- splitting the profits with the

23 19 pharmacy of NMC home care and NMC ventures, whoever

24 20 the -- I can't remember who their actual venture

25 21 partner was, you know.

26 22 Q. Uh-huh.

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2
3 1 we knew and had worked with. And, actually, my wife
4 2 and I had socialized with him, and he was a gay
5 3 doctor, and his partner, John Denitkus, owned
6 4 probably the most successful medical practice in
7 5 town at the time, and they were doing most of the
8 6 HIV care. So we had social ties.

9 7 And so we were pretty dumbfounded when he
10 8 came there and gave us the proposal from NMC for
11 9 ImmuneCare that contemplated, you know, us taking

12
13
14 10 and giving them all of our patients and coming to
15 11 work for them.

16 12 And there were, you know, issues in there
17 13 about the rent, getting paid more rent than what the
18 14 market -- what the market allowed, and then
19 15 offered -- and I can't remember the pro formas
20 16 exactly. We have those, and if they are
21 17 discoverable, you will certainly see them. Offered
22 18 to make us millionaires in five years. You know,
23 19 they wanted to take this and turn it into a
24 20 prototype outpatient HIV treatment center and turn
25 21 it into what they had done with the SRD facilities.

26 22 And Mr. Ham -- Dr. Hamper is who Larry -

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2
3 1 Larry Siegel was an old colleague of his, is the one
4 2 who approached Larry or Larry approached him and
5 3 came up with the concept.

6 4 What I'm trying to say is Dr. Hamper and
7 5 Larry were pioneers in developing outpatient end
8 6 stage renal disease treatment facilities, so they
9 7 had a history of doing that.

10 8 The glitch with us was we would have to
11 9 give up our autonomy, our business. They were -

12
13
14 10 the way that they produced the pro formas, they were
15 11 taking a patient population that we had been
16 12 servicing for the last few years and tripling or
17 13 quadrupling the services.

18 14 And we were like, you know, where is that
19 15 coming from? The patient population isn't changing.
20 16 If anything, it is declining because HIV patients in
21 17 general were dying. They didn't have the protease
22 18 inhibitors and the oral therapies that are on the
23 19 market now that make their lives more of a chronic
24 20 illness and, you know, increase the quality of it.

25 21 That was one of the statements that

26 22 Dr. Siegel made to us, was, well, we have ways

1 Page 84

2 1 of billing -- NMC has ways of billing that you've
3 2 never heard of. Immediately that piqued our
4 3 attention, you know.

5 4 Q. And so as I understand it, in terms of the
6 5 investigations that you undertook, part of it was
7 6 research to determine both, I guess, the legal -
8
9 7 legal basis and educate yourself about the legal

10
11 8 basis; correct?
12

13 9 A. Well, we hired Mr. Breen. He represented
14 10 us, and we started learning, you know, as much as we
15 11 could.

16 12 Q. And you undertook factual investigations,
17 13 as I understand it, both in that case and in later
18 14 drug pricing investigations; correct?

19 15 A. We did.

20 16 Q. Could you tell me, what activities did you
21 17 undertake as part of your factual investigations in
22 18 the drug pricing cases?

23 19 MR. BREEN: Objection to form. I would
24 20 also caution the witness that -- and I'm not
25 21 instructing the witness not to answer, but I
26 22 will interpose an objection at the appropriate

1 Page 85

2 1 time if it gets into investigations that were
3 2 conducted with counsel that may fall under the
4 3 work product privilege. I'm not going to
5 4 impose any objection yet, but I will just
6 5 caution the witness if we get to that point,
7 6 let me object and then we will discuss it.

8

9 7 MR. COOK: Sure.

10

11 8 BY MR. COOK:

12

13 9 Q. I'm asking now just for general
14 10 descriptions of what you have done as opposed to the
15 11 results of the investigation or what you actually
16 12 learned. But if you can, at a 50,000-foot level,
17 13 describe sort of what investigations you undertook.

18 14 A. Off the top of my head, we restarted

19 15 researching the reimbursement issues. Well,

20 16 remember -- or let me give you some information.

21 17 Most of the patients that we took care of

22 18 were HIV patients, the majority, you know. I want

23 19 to tell you 90 percent. And the drugs that we were

24 20 using to treat them were single source drugs. They

25 21 were drugs that were brand new. I mean, I gave you

26 22 an example of pentamidine. Well, the other good

1 Page 86

2
3 1 example is Cytovene, which is a drug produced by
4 2 Sentex Labs, for CMV retinitis, which is another -3
5 which was a really, very opportunistic infection.

6 4 Many of them were going blind from it.

7 5 So, I mean, we were even on the level when

8 6 we first started doing this, doing

9 7 experimental therapy -- DHPG was the precursor to

10 8 Cytovene. So we were able to work through our

11 9 physicians with whomever, whatever pharmaceutical

12
13
14 10 company was sponsoring it.

15 11 The point is, I'm rambling, that a lot of

16 12 what we were looking at in drugs were -- were brand

17 13 named, single source drugs, you know, didn't -- you

18 14 didn't have opportunities to buy except in

19 15 certain -- certain ways.

20 16 Q. Uh-huh.

21 17 A. So we started looking at all of the drugs.

22 18 Because one of the drugs that they used in their pro

23 19 forma was that, and one was IVIG. They were using

24 20 IVIG, which is a biological drug that is used

25 21 primarily for autoimmune disorders, say like

26 22 Guillain-Barre or -- there is a few other, I just

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2

3 1 can't recall off the top of my head what their

4 2 indications were.

5 3 But they were using doctors -- doctors can

6 4 off use something off label, you know. And they

7 5 were using IVIGs on patients to -- to boost their

8 6 immune system, so to speak. That is the best way I

9 7 can put it.

10 8 And that was one of the drugs that, you

11 9 know, we started looking at, how you can buy it and

12

13

14 10 how you can get reimbursed. And, you know, we

15 11 called different insurance companies, we talked to

16 12 different, you know, third party payors. We also

17 13 would call Medicaid -- not Medicaid, more of their

18 14 Consult Tech or Unisist, the ones that administered,

19 15 you know, the payment of claims and the

20 16 reimbursement part. I don't know. And Florida had

21 17 either Consult Tech or Unisist. I can't remember.

22 18 They had both. I can't remember which one at the

23 19 time.

24 20 We would call up and give them NDC

25 21 numbers, and they would give us the reimbursement

26 22 amount. And we started compiling lists and watching

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2 1 what ImmuneCare was doing in prescription, you know,
3 2 in prescribing out there.

4 3 Q. You described on several occasions
5 4 telephone conversations that you would have as part
6 5 of your factual investigations.

7 6 A. Uh-huh.

8
9 7 Q. Would you keep any record of those
10
11 8 telephone conversations?

12
13 9 A. I think we have some handwritten records
14 10 of telephone conversations. I'm not going to sit
15 11 here and tell you how many or, you know, where they
16 12 exist. We kept notes at times, sure.

17 13 Q. There would be handwritten notes of your
18 14 conversations?

19 15 A. Yes.

20 16 Q. Would you ever do a formal memorandum of a
21 17 telephone interview?

22 18 A. I believe if a formal memorandum was done,
23 19 it would have been done through our counsel. We
24 20 would have called, given the information, counsel
25 21 would have put together a memorandum for us -22

26 Q. Leaving aside counsel preparing something,